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# DUI BEST SENTENCING PRACTICES GUIDEBOOK

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# *Introduction*

## **DUI Best Sentencing Practices Guidebook**

The Utah Sentencing Commission establishes the following DUI Best Sentencing Practices Guidebook. Shortly before the Governor's Council on Driving Under the Influence concluded its two-year study of DUI issues in Utah, it made recommendations to twenty entities including the Utah Sentencing Commission. Among other things, the Council requested that the Sentencing Commission develop a best practices guidebook that would address sentencing of DUI offenders and would be targeted at judges, prosecutors, probation officers, and law enforcement officers.

This DUI Best Sentencing Practices Guidebook is intended to enhance rather than erode the discretion of judges, prosecutors, probation officers, and law enforcement officers. No manual can replace the experience of these decision-makers, and no set of best practices or guidelines can capture the vast amount of variables present when dealing with individual offenders. However, all criminal justice professionals seek and profit from the best information available. Many have

expressed a desire to know what sanctions and interventions work with DUI offenders. This guidebook is intended to provide just that—the best information available concerning sanctions and interventions for DUI offenders. This guidebook should be considered a tool which will compliment the experience and knowledge of criminal justice professionals who work with and sentence DUI offenders.

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# I. *Philosophy of Sentencing*

The Sentencing Commission's mission statement summarizes the purposes of sentencing as follows:

- punish the offender
- protect and compensate the victim and society
- reduce the likelihood of future crimes by the offender through rehabilitation and incapacitation.

Individual sanctions and interventions focus on and are intended to fulfill different purposes of sentencing. Each has strengths and weaknesses and very few are intended to fulfill all of the above mentioned purposes.

Each sanction has its role and understanding that role becomes a key to sentencing. This best practices guidebook reviews numerous sentencing options and recognizes that no single sanction or intervention will work for every offender. The Sentencing Commission acknowledges this in a position statement addressing individualized sentences:

Criminal punishment, including intermediate sanctions, should focus on the particular circumstances of each situation.

- a) The severity of an offense should be determined by actual harm done and intent of the offender.
- b) Different sentencing approaches should be applied depending on the offenders' individual circumstances.

*This individualized sentencing approach is a key to sentencing DUI offenders.*

Many of the studies reviewed in this guidebook measure the effectiveness of sanctions and interventions in terms of repeat offenses or reduced alcohol-related crashes. Obviously, reduced repeat offenses and reduced alcohol-related crashes are not the only measures or purposes of sentencing that should be considered in sentencing a DUI offender. They are often emphasized because they are measurable and because they are major goals of the criminal justice system. However, all purposes of sentencing should be considered as part of the individualized sentencing approach.

This guidebook makes several references to the cost-effective nature of some sanctions and interventions. A position statement of the Sentencing Commission recognizes that this is one of the many issues that merits discussion:

Sentencing approaches should take into account, without being controlled by, available sanctioning resources and their relative cost-benefits.

In other words, cost is one of many relevant parts of the discussion on the use of particular sanctions and interventions.

## II. *Glossary of Terms*

### **Assessment**

An in-depth interview (one to two hours) used to determine if a person is in need of substance abuse treatment. In Utah, this assessment tool is the Addictions Severity Index (ASI), which can be self-administered. A licensed mental health therapist, however, must make the diagnosis, consistent with Utah law. Information gathered during the assessment process is used to determine need for treatment, the level/intensity, and length of care that a patient needs.

### **Blood or breath alcohol concentration (BAC)**

The amount of alcohol in one's blood or breath. Alcohol concentration in the blood is based upon grams of alcohol per 100 milliliters of blood while alcohol concentration in the breath is based upon grams of alcohol per 21 liters of breath.

### **Driving under the influence (DUI)**

According to Utah Code Annotated § 41-6-44(2)(a), “a person may not operate or be in actual physical control of a vehicle within this state if the person: (i) has sufficient alcohol in his body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test; (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation or actual physical control.”

### **Education**

Utah requires the Prime for Life® educational course for DUI offenders. The course is designed to explore and address any problems or risk factors that appear to be related to use of alcohol or other drugs and to help the individual recognize the harmful consequences of inappropriate use. Special emphasis is given to the dangers of drinking and driving. Offenders may not appear to meet the diagnostic criteria for a substance abuse disorder, but require early intervention for education and further assessment.

### **General deterrence**

As used in the guidebook, the term describes the goal of discouraging the general population from driving under the influence of alcohol or drugs.

### **High BAC**

A BAC of .16 (twice the legal limit) or higher.

### **Offender**

A person who has been convicted of DUI, driving with any measurable controlled substance in the body, or alcohol-related reckless driving.

### **Screening**

A quick (15 minute) and general appraisal of a person used to determine if they might need to be referred to a licensed substance abuse agency for a substance abuse assessment in order to determine a need for substance abuse treatment. Screening tools such as the CAGE, an initial screening instrument, or the Substance Abuse Subtle Screening Inventory (SASSI) are commonly used.

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## Specific deterrence

As used in this guidebook, the term describes the goal of discouraging an individual who has been convicted of a DUI offense from engaging in that behavior in the future.

## Treatment

Application of planned procedures to identify and change patterns of behavior that are maladaptive, destructive and/or injurious to health; or to restore appropriate levels of physical, psychological and/or social functioning. DUI offenders assessed as meeting the diagnostic criteria for a substance abuse disorder shall be required to participate in a treatment program in addition to, or in lieu of, the educational course. The severity of the disorder shall determine the level of treatment.

### III. *Summary of DUI Best Sentencing Practices*

Section III highlights the Best Practices as discussed throughout this guidebook and is intended as a quick reference. A thorough review of the detailed discussion in Sections IV through VI is critical to understanding these best practices.

#### Using This Guidebook

Readers should consider information on sanctions and interventions together rather than reviewing a specific sanction or intervention and deciding whether or not it is effective. Many sanctions may not reduce recidivism, but they do provide a mechanism for controlling the offender's behavior while other interventions occur that are successful in reducing recidivism.

#### Law Enforcement *(see detailed discussion: IV-5, F; IV-7, G)*

- Law enforcement officers must be aware of the no alcohol conditional license law and must enforce it.
- Law enforcement officers must be aware of the Not-A-Drop law and must enforce it.

#### General Sentencing *(VI-1)*

- Before imposing sentence, judges should be aware of the BAC and the criminal history of the offender and should review the incident report.

#### Incarceration *(VI-1, A)*

- When a judge chooses to impose a jail sentence of 48 hours, the order should specifically state “48 hours” in jail rather than “two days” in jail. Additionally, ordering that this jail time be served when the jails are less crowded will increase the chances of the defendant serving the entire 48 hours.
- Judges should strongly consider jail sentences of six months for chronic offenders who are not sentenced to prison.

#### Probation *(VI-3, B)*

- The effectiveness of probation in preventing DUI recidivism depends, in large part, on the conditions imposed and the level of supervision associated with the probation. Some conditions of probation may provide a mechanism for controlling the offender's behavior while other interventions, such as education and treatment, take place.
- Whenever possible, DUI probationers should be supervised.

#### Electronic Monitoring *(VI-4, C)*

- Electronic monitoring is as effective as and less expensive than incarceration. Factors significantly related to success for those utilizing electronic monitoring include attendance at treatment and steady employment.

### **Ignition Interlock (VI-4, D)**

- Ignition interlock can be an effective DUI control mechanism to be used while other interventions, such as education and treatment, are taking place.
- Responding to interlock failures can help prevent additional DUI offenses.

### **Fines (VI-6, E)**

- If the purpose of the fine is to punish the offender, full payment of fines in a timely manner should be emphasized. However, if the purpose of the fine is to encourage the offender to fulfill other court-ordered obligations, the practices of crediting fines for compliance with these obligations and extending the payment period should not be discounted.

### **Compensatory Work Service (VI-6, F)**

- Judges who choose to order compensatory work service should require service that provides some benefit to the community or service that helps reduce instances of driving under the influence by the defendant or by other people.

### **Screening and Assessment (VI-6, G)**

- Whenever possible, the local substance abuse authority should perform the screening and assessment and a separate licensed treatment provider should provide the education and treatment.

### **Education and Treatment (VI-7, H)**

- Controlling behavior while the offender is undergoing treatment is critical to successful recidivism reduction. Control can be in the form of supervised

probation, electronic monitoring, ignition interlock, or license actions. This control must be maintained during the six to 18 months that are required to treat the DUI offender.

- The court should not order a particular education course or a particular treatment modality. Rather, the court should order that the offender receive a screening by a licensed treatment provider and participate in any assessment, education, and/or treatment recommended by the treatment provider. Utah law requires that the court order treatment for felony convictions and that the court order education for misdemeanor convictions if treatment is not ordered. Even in these circumstances, the court should allow the licensed treatment provider to determine the education and/or treatment program best suited for the individual offender.

### **License and Vehicle Actions (VI-9, I)**

- License suspensions must last at least three months to be effective in reducing recidivism and the optimal suspension period for recidivism reduction is 12 to 18 months. This is consistent with Utah law requiring a 90-day suspension for a first DUI violation and a one-year revocation for second or subsequent DUI violations.

### **Victim Impact Panels (VI-11, J)**

- Victim Impact Panels may be effective for first-time DUI offenders, but should never replace other sanctions and interventions.



## IV. *Current Utah DUI Laws*

### A. Driving Under the Influence (Utah Code Ann. § 41-6-44)

As noted in the definition section, Utah law prohibits any person from “[operating] or [being] in actual physical control of a vehicle within this state if the person:”

- has enough alcohol in the body that a test administered at some point after the operation or physical control of the vehicle reveals a BAC of .08 or greater;
- is under the influence of any drug or alcohol or a combination of both such that the person is incapable of safely operating the vehicle; or
- has a BAC of .08 or greater at the time of operation or physical control of the vehicle.

In other words, a person whose BAC is or exceeds .08 may not operate a vehicle or be in control of a vehicle under any circumstance. Even with a BAC less than .08, a person may not operate or be in control of a vehicle if drugs or alcohol prevent the person from safely operating the vehicle.

#### Categorization of Offenses

- 1) A first or second DUI offense is a **class B misdemeanor** unless an aggravating factor is present.
- 2) Aggravating factors that establish a **class A misdemeanor** include the following:
  - offender caused bodily injury to another; or
  - offender had a passenger under 16 years of age in the vehicle at the time of the offense; or

### CATEGORIZATION OF DUI OFFENSES

#### A 1st or 2nd DUI Offense is a **CLASS B MISDEMEANOR**

##### Aggravating factors that elevate a 1st or 2nd DUI offense to a **CLASS A MISDEMEANOR**

- offender caused bodily injury to another; or
- offender had a passenger under 16 years of age in the vehicle at the time of the offense; or
- offender was 21 years of age or older and had a passenger under 18 years of age in the vehicle at the time of the offense.

##### Aggravating factors that elevate a 1st or 2nd DUI offense to a **THIRD DEGREE FELONY**

- offender caused serious bodily injury to another; or
- offender was previously convicted of automobile homicide under Utah Code Ann. § 76-5-207 and the automobile homicide was committed after July 1, 2001; or
- offender was previously convicted of any felony DUI offense.

#### A 1st or 2nd DUI offense is also a **THIRD DEGREE FELONY IF**

- offender has two or more prior convictions within the last ten years. For purposes of this enhancement, “conviction” includes a conviction of any of the following:
  - DUI
  - alcohol-related reckless driving
  - driving with any measurable controlled substance that is taken illegally
  - automobile homicide

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- offender was 21 years of age or older and had a passenger under 18 years of age in the vehicle at the time of the offense.

*Any one of these aggravating factors results in a class A misdemeanor for a first or second DUI offense.*

3) Aggravating factors that establish a **third degree felony** for a first or second DUI offense include the following:

- offender caused serious bodily injury to another; or
- offender was previously convicted of automobile homicide under Utah Code Ann. § 76-5-207 and the automobile homicide was committed after July 1, 2001; or
- offender was previously convicted of any felony DUI offense.

*Any of the factors above aggravates a first or second DUI offense to a third degree felony.*

4) A DUI offense is also a **third degree felony** if:

- offender has two or more prior convictions within the last ten years. For purposes of this enhancement, “conviction” includes a conviction of any of the following:
  - DUI
  - alcohol-related reckless driving
  - driving with any measurable controlled substance that is taken illegally
  - automobile homicide.

## B. Driving with any Measurable Controlled Substance in the Body

*(Utah Code Ann. § 41-6-44(8), (9) and § 41-6-44.6)*

Any person who operates or is in physical control of a motor vehicle while having any measurable, illegally consumed controlled substance in the person's body is guilty of a class B misdemeanor. If the prosecutor agrees, a defendant may plead guilty to this crime in satisfaction of, or as a substitute for, a DUI charge. A conviction of this crime is considered a prior conviction for purposes of enhancing a third or subsequent DUI charge to a felony. The provisions in the DUI law regarding screening, assessment, education, and treatment apply to driving with any measurable controlled substance in the body convictions.

## C. Alcohol-Related Reckless Driving

*(Utah Code Ann. § 41-6-44(8), (9) and § 41-6-45)*

Any person who “operates a vehicle in willful or wanton disregard for the safety of persons or property” is guilty of reckless driving, a class B misdemeanor. Utah Code Ann. § 41-6-45(1)(a). Utah law allows a defendant charged with DUI to plead guilty to reckless driving in satisfaction of, or as a substitute for, a DUI charge if the prosecutor agrees. This is known as alcohol-related reckless driving. When a defendant pleads guilty to alcohol-related reckless driving, the prosecutor must state on the record whether the defendant had consumed alcohol or drugs in connection with the violation. Alcohol-related reckless driving is considered a prior conviction for purposes of enhancing a third or subsequent DUI charge to a felony. The provisions in the DUI law regarding

screening, assessment, education, and treatment apply to alcohol-related reckless driving convictions.

## D. Sanctions and Interventions

### 1) Incarceration (Utah Code Ann. § 41-6-44):

For a first misdemeanor conviction, the court *SHALL* do **one** of the following:

- impose a jail sentence of not less than 48 consecutive hours; or
- require the person to work in a compensatory work service program for not less than 48 hours; or
- require the offender to participate in home confinement through the use of electronic monitoring.

For a second misdemeanor conviction within ten years, the court *SHALL* do **one** of the following:

- impose a jail sentence of not less than 240 consecutive hours; or
- require the offender to work in a compensatory work service program for not less than 240 hours; or
- require the offender to participate in home confinement through the use of electronic monitoring.

For a third or subsequent misdemeanor offense within 10 years or for any felony offense, the court *SHALL*:

- sentence the offender to prison or impose a jail sentence of not less than 1,500 hours.

### 2) Supervised Probation (Utah Code Ann. § 41-6-44(14)):

One sentencing option for DUI defendants is supervised probation.

The court specifies the period of supervised probation and the defendant pays the cost.

The court provides the probation “by contract with a probation monitoring agency or a private probation provider.” The probation provider “shall monitor the person’s compliance with all conditions of the person’s sentence, conditions of probation, and court orders...and shall notify the court of any failure to comply with or complete that sentence or those conditions or orders.”

The court *MAY* order supervised probation for:

- a first misdemeanor conviction.

The court *SHALL* order supervised probation for:

- a second misdemeanor conviction
- any misdemeanor conviction if the BAC of the defendant was .16 or higher
- a felony conviction if the court does not impose a prison term.

### 3) Electronic Monitoring (Utah Code Ann. § 41-6-44(13)):

The court *MAY* order the defendant to:

participate in home confinement through the use of electronic monitoring as an alternative to all or part of a jail sentence for a first or second misdemeanor conviction. Additionally, if the court chooses to sentence a felony DUI defendant to probation, the court may include electronic monitoring as a condition of probation.

The defendant must pay the costs of electronic monitoring unless the court waives those costs in which case the electronic monitoring provider shall absorb the costs.

As part of electronic monitoring, the court *MAY*:

- “require the person’s electronic home monitoring device to include a substance abuse testing instrument;”
- “restrict the amount of alcohol the person may consume during the time the person is subject to home confinement;” and
- “set specific time and location conditions that allow the person to attend school, educational classes, or employment and to travel directly between those activities and the person’s home.”

#### **4) Ignition Interlock** (Utah Code Ann. § 41-6-44.7)

The court *MAY* order the installation of an ignition interlock system for:

- any offender convicted of DUI who is sentenced to probation.

The court *SHALL* order the installation of an ignition interlock system for:

- any offender convicted of DUI who is under the age of 21 when the violation occurred; or
- any offender convicted of a second or subsequent DUI within 10 years of a prior conviction.

#### **5) Fines** (Utah Code Ann. § 41-6-44):

The court *SHALL* impose a fine of:

- not less than \$700 for a first misdemeanor conviction; or

- not less than \$800 for a second misdemeanor conviction; or
- not less than \$1500 for a felony conviction.

#### **6) Compensatory Work Service Program** (Utah Code Ann. § 41-6-44):

The court *MAY* order the defendant to:

work in a compensatory work service program as an alternative to all or part of a jail sentence for a first or second misdemeanor conviction. The minimum number of compensatory work service program hours for a first misdemeanor conviction is 48 while the minimum for a second misdemeanor conviction is 240.

#### **7) Screening and Assessment** (Utah Code Ann. § 41-6-44):

The court *SHALL* order:

- every DUI offender to participate in a screening and assessment.

#### **8) Education** (Utah Code Ann. § 41-6-44)

For first and second time offenders the court *SHALL* order:

- the offender to participate in an educational series if the court does not order substance abuse treatment.

#### **9) Treatment** (Utah Code Ann. § 41-6-44):

The court *MAY* order:

- substance abuse treatment for a first or second offense.

The court *SHALL* order:

- substance abuse treatment for a third or subsequent conviction or for any other felony conviction.

# **10) Driver License Actions** (Utah Code Ann. § 41-6-44(11)):

The Driver License Division *SHALL*:

- suspend the offender's license for 90 days upon a first DUI conviction; and
- revoke the offender's license for one year upon a second or subsequent DUI conviction.

The court *MAY*:

- order an additional suspension or revocation of the offender's license for a period of 90 days, 180 days, one year or two years.

## **E. DUI Sentencing Matrix**

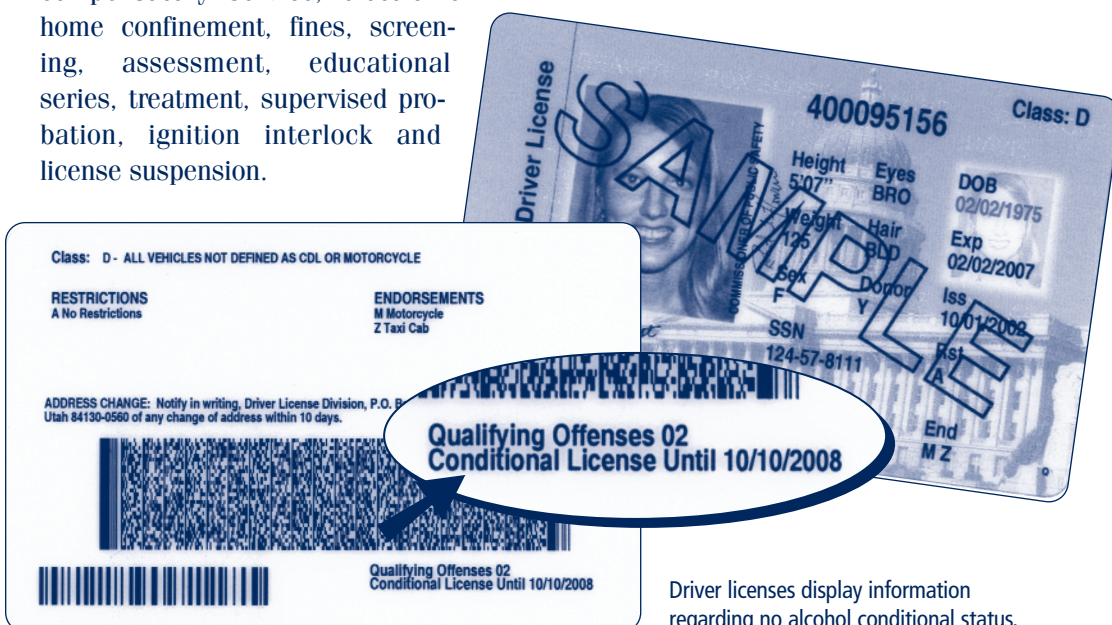
The chart on page IV-6, is a DUI Sentencing Matrix that provides an overview of DUI laws in Utah by listing what the court shall order and may order in DUI cases and by noting special sentences required for offenders with a high BAC. The matrix addresses numerous parts of a DUI defendant's sentence including jail or prison, compensatory service, electronic home confinement, fines, screening, assessment, educational series, treatment, supervised probation, ignition interlock and license suspension.

Also included in the DUI Sentencing Matrix is a summary of what conduct constitutes a class B misdemeanor DUI offense, class A misdemeanor DUI offense, and a felony DUI offense.

The matrix is not a substitute for familiarity with the statute, but is an excellent reference tool.

## **F. No Alcohol Conditional License** (Utah Code Ann. § 53-3-232)

Drivers previously convicted of a DUI offense are more likely than other drivers to be subsequently arrested for a DUI offense (Brewer et al. 1994). This fact has led several states, including Utah, to enact zero tolerance policies for those convicted of DUI. Utah law mandates that the Driver License Division issue a no alcohol conditional license to any person convicted of a qualifying offense once that person has completed any applicable license suspensions or revocations, or upon conviction if no suspensions or revocations result from the conviction.



Driver licenses display information regarding no alcohol conditional status.

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## DUI Sentencing Matrix (Current as of the 2003 General Session)

	FIRST OFFENSE	SECOND OFFENSE WITHIN 10 YEARS	THIRD OR SUBSEQUENT OFFENSE WITHIN 10 YEARS
<b>CLASSIFICATION</b>	CLASS B MISDEMEANOR BECOMES A CLASS A: <ul style="list-style-type: none"> <li>• if bodily injury inflicted</li> <li>• if passenger is under 16</li> <li>• if passenger is under 18 and driver is 21 or older</li> </ul> THIRD DEGREE FELONY: <ul style="list-style-type: none"> <li>• if serious bodily injury</li> </ul>	CLASS B MISDEMEANOR BECOMES A CLASS A: <ul style="list-style-type: none"> <li>• if bodily injury inflicted</li> <li>• if passenger under 16</li> <li>• if passenger under 18 and driver is 21 or older</li> </ul> THIRD DEGREE FELONY: <ul style="list-style-type: none"> <li>• if any prior felony DUI conviction or automobile homicide conviction</li> <li>• if serious bodily injury</li> </ul>	3RD DEGREE FELONY
<b>SENTENCING</b> Jail – <b>SHALL</b> order:	48 consecutive hours <b>OR</b> 48 hours compensatory service <b>OR</b> electronic home confinement*	240 consecutive hours <b>OR</b> 240 hours compensatory service <b>OR</b> electronic home confinement*	0-5 year prison term <b>OR</b> 1,500 hours jail (62.5 days) May also require electronic home confinement*
Fine – <b>SHALL</b> order:	\$700 minimum plus surcharge	\$800 minimum plus surcharge	\$1,500 minimum, unless 0-5 prison term is imposed
Other – <b>SHALL</b> order:	<ul style="list-style-type: none"> <li>• Screening &amp; assessment</li> <li>• Educational Series, unless treatment is ordered</li> <li>• <b>MAY</b> order treatment</li> </ul>	<ul style="list-style-type: none"> <li>• Screening &amp; assessment</li> <li>• Educational Series, unless treatment is ordered</li> <li>• <b>MAY</b> order treatment</li> </ul>	<ul style="list-style-type: none"> <li>• Screening &amp; assessment</li> <li>• Intensive treatment or inpatient treatment and aftercare for not less than 240 hours</li> </ul>
Probation: **	<b>MAY</b> order supervised probation	<b>SHALL</b> order supervised probation	<b>SHALL</b> order supervised probation if 0-5 prison term is not imposed
Ignition interlock:***	<b>MAY</b> order ignition interlock	<b>SHALL</b> order ignition interlock (3 years)	<b>SHALL</b> order ignition interlock (3 years)
High BAC: (.16 or higher)	<ul style="list-style-type: none"> <li>• <b>SHALL</b> order supervised probation</li> <li>• If no treatment, interlock or home confinement, reasons must be stated on the record</li> </ul>	<b>SHALL</b> order supervised probation	<b>SHALL</b> order supervised probation if 0-5 prison term is not imposed
License suspension:	Court <b>MAY</b> order <b>additional</b> 90 DAYS, 180 DAYS, 1 YEAR OR 2 YEARS	Court <b>MAY</b> order <b>additional</b> 90 DAYS, 180 DAYS, 1 YEAR OR 2 YEARS	Court <b>MAY</b> order <b>additional</b> 90 DAYS, 180 DAYS, 1 YEAR OR 2 YEARS

\*See §41-6-44(13) for Electronic Home Confinement provisions

\*\*See §41-6-44(14) for Supervised Probation provisions \*\*\*See §41-6-44.7 for Ignition Interlock provisions

NOTE: Supervised probation is also required for all violations of §41-6-44.6 (DUI Drugs)

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**Qualifying Offenses Include:**

- DUI
- Alcohol-related reckless driving
- Driving with any measurable controlled substance in the body
- Automobile homicide

*A No Alcohol Conditional License means exactly what it says. The holder of this type of license is prohibited from operating a motor vehicle or motorboat with any alcohol in the person's body regardless of whether the person's BAC exceeds the legal limit or not.* These restrictions remain in place for two years following a first qualifying conviction or six years following a second or subsequent conviction.

The no alcohol conditional license contains a code that alerts law enforcement to these restrictions, a violation of which is a class B misdemeanor.

In order for Utah's conditional license to be effective, law enforcement officers must be aware of the law and must enforce it. To assist law enforcement officers in this effort, driver licenses in Utah currently display information regarding their conditional status. Such status is noted on

any amount of alcohol in their body. Ongoing training regarding the no alcohol conditional license will also be a critical component of its success.

A similar law was established in Maine in 1988. Under Maine law, the legal BAC level was set to .05, nearly half the normal legal BAC limit, for those drivers previously convicted of a DUI offense. The law was subsequently modified in 1995 to prohibit these offenders from driving with any alcohol in the body. After tracking the law for six years, researchers discovered a 25% decrease in fatal crashes involving drivers previously convicted of DUI offenses. This finding is even more interesting when compared to the 50% increase in similar crashes that occurred in surrounding states during the same time period (Hingson & Heeren 1999; Hingson 1996).

**BEST PRACTICES**

*Law enforcement officers must be aware of the Not-A-Drop law and must enforce it.*

**BEST PRACTICES**

*Law enforcement officers must be aware of the no alcohol conditional license law and must enforce it.*

the back of the license in the bottom right-hand corner with the words "Conditional License Until [date]." Any driver with this notation is prohibited from driving with

**G. Not-A-Drop (Utah Code Ann. § 53-3-231) Younger than 21 Years of Age**

A zero tolerance policy exists for all drivers younger than 21 years of age. A driver in this age group may not operate a motor vehicle or motorboat with any amount of alcohol in the body. A first violation results in a 90-day license suspension while a second or subsequent violation within three years results in a one-year license suspension.

Several rationales support this policy:

- Drivers in this age group may not legally consume alcohol. (This fact alone merits a zero tolerance policy).
- Younger drivers are likely to become impaired faster and the effects of alcohol are likely to be more pronounced, thus enhancing the danger of driving with even a small amount of alcohol in the body.
- Younger drivers lack driving experience and are more likely to take risks with their driving. Alcohol use, which lowers inhibitions, may add to their tendency to take risks.
- Early action must be taken with youth engaging in the dangerous behavior of drinking and driving in an effort to discourage such behavior in the future.

The success of this law will depend on awareness and enforcement by law enforcement officers.

## H. DUI Plea Restrictions (Utah Code Ann. § 41-6-43.8)

Utah law prohibits a court from accepting a plea of guilty or no contest to a DUI charge unless one of the following occurs:

- the prosecutor agrees to the plea; or
- the charge is filed by information; or
- the court receives verification from a law enforcement agency that the defendant's driver license record contains no record of a conviction, arrest, or charge for an alcohol-related driving offense that would enhance the current charge to a felony.

This law, passed during the 2003 General Session, seeks to prevent defendants from pleading guilty to a misdemeanor DUI charge that should be enhanced to a felony due to prior DUI convictions.

This plea practice has happened when a defendant with a history of DUI offenses quickly pleads guilty to a misdemeanor DUI citation, knowing that the quick turn-around will not allow sufficient time for law enforcement or prosecutors to review the defendant's criminal history.

The result has been that the defendant is permitted to plead guilty to a misdemeanor when the charge should be a felony. The new law on plea restrictions will help ensure that DUI defendants are charged appropriately.



## V. Utah Statistics

The Utah Commission on Criminal and Juvenile Justice conducted a brief analysis of DUI arrests between 1990 and 2000. During the years examined, a total of 143,514 arrests were reported, committed by 102,528 different individuals.

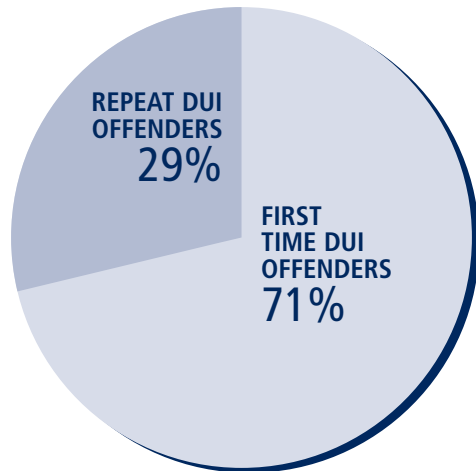
The ratio of DUI arrests to total arrests remained relatively consistent over the period, varying from 7.7% to 10.0%. Of the arrestees, 83% were male and 17% were female. Three-quarters of the arrestees were under the age of 40, with most in their twenties.

About three-quarters of the offenders had only one DUI arrest during the period examined. The remainder had two or more DUI arrests. However, due to repeat offending, one-quarter of the offenders were responsible for nearly half of the DUI arrests.

Focusing specifically on the repeat DUI offenders, data shows that about three-quarters were re-arrested within three years, and 90% were rearrested within five years. This group of repeat offenders was more likely to be male and slightly younger at the time of their first arrest.

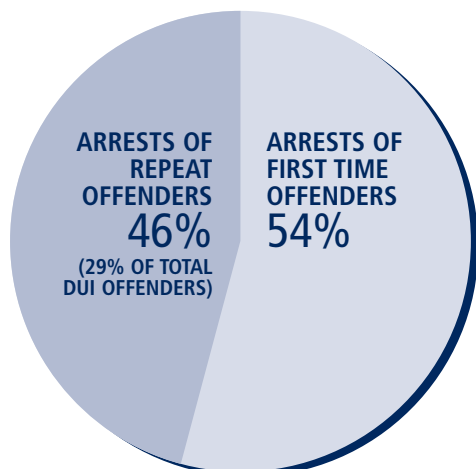
Finally, for those cases with a reported adjudication date, the analysis found that about one-third were processed within 30 days of the arrest. Two-thirds of the cases were processed within 90 days of arrest. Almost all of the cases were processed by the time one year had elapsed.

### TOTAL DUI OFFENDERS 1990-2000



About three-quarters of the offenders had only one DUI arrest during the period examined.

### TOTAL DUI ARRESTS 1990-2000



About one-quarter of the offenders were responsible for nearly half of the DUI arrests.

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## VI. *Sanctions and Interventions*

Three points are critical to understanding and successfully using the following material regarding specific sanctions and interventions. First, no sanction or intervention works for all offenders in all circumstances. Unfortunately, there simply is no “silver bullet” approach to working with DUI offenders. Furthermore, there is no outline to follow for rehabilitating a DUI offender. Each offender presents a unique set of circumstances and each sentence will likewise need to be individualized.

Second, research routinely shows that a multi-modal approach involving a combination of various sanctions and interventions is most effective in reducing subsequent DUI offenses and alcohol-related crashes. Readers should consider information on sanctions and interventions together rather than reviewing a specific sanction or intervention and deciding whether or not it is effective. Many sanctions may not reduce recidivism, but they do provide a mechanism for controlling the offender’s behavior while other inter-

ventions occur that are successful in reducing recidivism.

Third, many factors, other than the effectiveness of particular sanctions and interventions, will be relevant at sentencing. For instance, before imposing sentence, judges should be aware of the BAC and the criminal history of the offender and should review the incident report. These factors will assist judges in fashioning appropriate sentences.

### BEST PRACTICES

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### BEST PRACTICES

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### A. Incarceration

The primary purposes of incarceration are to punish the offender and to prevent future criminal behavior through incapacitation. In other words, judges sometimes sentence DUI offenders to jail to punish them and other times to prevent future DUI offenses while the offender is incarcerated. Courts may also use short jail sentences for specific deterrence in an effort to “shock” an offender into changing his or her ways.

Researchers have analyzed the effectiveness of mandatory jail laws for DUI offenders and the effects of various lengths of incarceration. Research that studied a 1982 Arizona statute, considered by most to be quite punitive, had some compelling results (Ross et al. 1990). The Arizona law

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required jail time for all convicted DUI offenders, even first-time offenders. The program received extensive publicity prior to its implementation with the anticipation of effective general deterrence. However, research found that the mandatory incarceration law had no effect on the number of DUI offenses or alcohol related-traffic deaths. This finding was supported by similar studies of the same statute. One possible explanation for the ineffectiveness of mandatory jail terms is the low possibility of being caught—general deterrence will not occur if the targeted population does not perceive a risk of being arrested.

Utah law does not mandate jail for all first-time DUI offenders. Rather, a jail sentence of not less than 48 hours is one sentencing option for first-time offenders. While incarceration is effective at controlling the offender's behavior, many other sanctions are equally effective in this regard and less expensive. Thus, deciding whether to impose a jail sentence for a first-time DUI offender will likely involve consideration of the offender's BAC and criminal history as well as the need for punishment. When a judge chooses to impose a jail sentence of 48 hours, the order should specifically

state "48 hours" in jail rather than "two days" in jail. Because the definition of "two days" is more flexible than the definition of "48 hours," offenders ordered to serve two days in jail often serve less than 48 hours. Additionally, ordering that this jail time be served when the jails are less crowded will increase the chances of the defendant serving the entire 48 hours.

Of course, incarceration becomes an increasingly important sentencing option for chronic offenders. For these offenders, specific deterrence rather than general deterrence becomes a primary focus. Some studies have attempted to find an optimal incarceration threshold which would identify effective rather than excessive punishment. Finding such a threshold would save public funds by keeping DUI offenders in jail long enough to reduce the chances of future DUI offenses, but not longer than necessary.

One particular study analyzed chronic DUI offenders with an average of three DUI convictions per individual and an average sentence length of nine months (Weinrath & Gartrell 2001). The analysis revealed that offenders who served less than four months in jail or prison were the most likely to reoffend. The analysis also showed that the effects of specific deterrence appeared to plateau at five to six months. The authors suggest a model sentence length of six months for chronic offenders. Of course, this suggested sentence length is based solely on the relationship between incarceration and repeat offenses. Other considerations, such as the number of prior convictions, injury to other people, or damage to property may demand consideration of a longer sentence as well as commitment to prison

## BEST PRACTICES

*When a judge chooses to impose a jail sentence of 48 hours, the order should specifically state "48 hours" in jail rather than "two days" in jail. Additionally, ordering that this jail time be served when the jails are less crowded will increase the chances of the defendant serving the entire 48 hours.*

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rather than jail. There is no established definition of chronic offender. Factors considered in the determination of which offenders are chronic include the number of DUI offenses and the time period in which those offenses occurred.

### BEST PRACTICES

*Judges should strongly consider jail sentences of six months for chronic offenders who are not sentenced to prison.*

The authors did not promote incarceration as the most effective sanction for DUI offenders, but argue that an appropriate period of incarceration can have a positive specific deterrent effect. Judges should strongly consider jail sentences of six months for chronic offenders who are not sentenced to prison.

## B. Probation

Probation exists as an alternative to incarceration. It permits an offender to be released into the community under a set of conditions imposed by the judge in lieu of jail or prison or in conjunction with a shortened jail term. If the offender violates a condition of probation, the judge may revoke the probation status and impose the suspended jail or prison term. The conditions may be tailored to the individual offender, but often include things such as education and/or treatment as deemed necessary by a licensed treatment provider, community service, electronic monitoring, ignition interlock, and abstinence from alcohol. Many of these possible conditions of probation will be

discussed in detail in this guidebook.

Some have argued that keeping DUI offenders out of jail and supervised on probation is effective in reducing recidivism. The primary argument supporting this viewpoint is that offenders on probation can be monitored for alcohol consumption, treatment, employment, etc. An additional argument made in favor of probation is that jail is not a cost-effective approach to reducing recidivism. These arguments do not address a particular offender's need for punishment or incapacitation and likely apply more to first-time DUI offenders than chronic offenders. A meta-analysis of treatment programs for DUI offenders evaluated probation combined with treatment programs (Wells-Parker et al. 1988). The study concluded that probation with treatment can help reduce DUI recidivism.

The effectiveness of probation in preventing DUI recidivism depends, in large part, on the conditions imposed and the level of supervision associated with the probation. The study addressed above found probation to be effective when combined with

### BEST PRACTICES

*The effectiveness of probation in preventing DUI recidivism depends, in large part, on the conditions imposed and the level of supervision associated with the probation. Some conditions of probation may provide a mechanism for controlling the offender's behavior while other interventions, such as education and treatment, take place.*

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treatment. Some conditions of probation such as driver license actions, electronic monitoring, or ignition interlock, as discussed later in this guidebook, may provide a mechanism for controlling the offender's behavior while other interventions, such as education and treatment, take place.

Supervision of DUI probationers will also play a role in the effectiveness of probation as offenders will realize that the conditions are being monitored and that fulfillment of those conditions is essential to avoid incarceration or other sanctions. Budget constraints may impact which DUI offenders are actively supervised. However, whenever possible, DUI probationers should be supervised. Consistent with Utah law, repeat DUI probationers must be supervised.

### BEST PRACTICES

*Whenever possible,  
DUI probationers should  
be supervised.*

## C. Electronic Monitoring

Electronic monitoring has been touted by some as a less costly and more effective form of controlling and punishing convicted DUI offenders when compared to some sanctions, particularly incarceration. The purpose of the monitoring is to enforce “house arrest” as a form of punishment, as well as incapacitation and specific deterrence.

One particular study looked at DUI offenders sentenced to electronic monitoring and a control group sentenced to incarceration

(Courtright et al. 2000). The study found no significant differences between the two groups. In other words, electronic monitoring was found to be as effective as incarceration. Factors significantly related to success for those utilizing electronic

### BEST PRACTICES

*Electronic monitoring is as effective  
as and less expensive than  
incarceration. Factors significantly  
related to success for those  
utilizing electronic monitoring  
include attendance at treatment  
and steady employment.*

monitoring include attendance at treatment and steady employment.

The fact that electronic monitoring is less expensive than, and as effective as, incarceration makes it an attractive sentencing option for the State of Utah. (The cost effectiveness is especially attractive considering that current law requires the offender to pay the costs of electronic monitoring.) It is also attractive when considering the overcrowded conditions of many jails. One effect that electronic monitoring may not provide is the “shock” element of being incarcerated.

## D. Ignition Interlock

Ignition interlock is a technological advance in DUI control. The ignition interlock device is installed in a vehicle and the driver must blow into the device before the vehicle can be started. If the interlock detects alcohol above a prescribed limit,

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the ignition of the vehicle is disabled, thus preventing drunken driving. Over the years, several improvements have been made to these devices, such as data recorders that record the date and time of failures and anti-tamper systems that help in assuring the device is not disabled or otherwise tampered with (Coben & Larkin 1999).

Research has shown ignition interlock devices to be effective in reducing DUI-related recidivism. This beneficial effect does not appear to be any different between first-time, low-risk and repeat, high-risk DUI offenders (Coben & Larkin 1999; Beck & Rauch 1999; Voas, et al.

Interestingly, with this apparent uneven choice, only 62% of the offenders chose ignition interlock. Still, with 38% of those qualifying for the device choosing not to have it installed, the jurisdiction realized greater reductions in DUI recidivism when compared to another jurisdiction without the choice of using the interlock device (Voas, et al. 2002).

Data recorders, used in tandem with ignition interlock, help establish patterns of high-risk times for DUI offending and DUI recidivism. Looking at the date and time when ignition interlock failures occur, researchers have found the device has been successful in blocking drinking and driving during the high-risk periods of evenings and weekends (Marques, et al. 1999). Research has also found that combining the variables of multiple-prior DUIs and a high number of interlock warnings and failures during the first five months of installation can predict more than 60% of

### BEST PRACTICES

*Ignition interlock can be an effective DUI control mechanism to be used while other interventions, such as education and treatment, are taking place.*

1999; Voas, et al. 2002; Marques, et al. 1999). However, a few studies saw strong decreases in effectiveness once the device was removed from the vehicle (Voas, et al. 1999, Beck & Rauch 1999). This research suggests ignition interlock can be an effective DUI control mechanism to be used while other interventions, such as education and treatment, are taking place.

In one jurisdiction studied, the court presented DUI offenders with the option of having ignition interlocks installed on their vehicles in lieu of incarceration or electronically monitored house arrest.

### BEST PRACTICES

*Responding to interlock failures can help prevent DUI offenses.*

repeat DUI offenses (Marques, et al. 2001). This link between interlock failures and repeat DUI offenses provides probation officers with an additional tool in the supervision of DUI offenders as it suggests the need for heightened supervision or additional intervention following an interlock failure. Responding to these warning signs can help prevent additional DUI offenses.

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**BEST PRACTICES**

*If the purpose of the fine is to punish the offender, full payment of fines in a timely manner should be emphasized. However, if the purpose of the fine is to encourage the offender to fulfill other court-ordered obligations, the practices of crediting fines for compliance with these obligations and extending the payment period should not be discounted.*

**E. Fines**

Research on the use of fines in criminal sentencing in the United States is scarce. Some have suggested that problems with fines in the United States include the practices of suspending fines and allowing fines to be paid over long periods of time so that the impact of the fine is weakened. Others have suggested that the practice of “crediting” fines for compliance with other parts of the court order (for example, reducing the fine when the defendant attends treatment) or extending the payment period encourages offenders to fulfill other parts of the court order that have proven effective in reducing recidivism.

Any best practices regarding fines would need to be based on something other than their ability or inability to reduce recidivism since that remains unknown. If the purpose of the fine is to punish the offender, full payment of fines in a timely manner should be emphasized. However, if the purpose of the fine is to encourage the offender to fulfill other court-ordered obligations, the practices of crediting fines

for compliance with these obligations and extending the payment period should not be discounted.

**F. Compensatory Work Service**

Compensatory work service is another area that has not been extensively studied. Judges who choose to order compensatory work service should require service that

**BEST PRACTICES**

*Judges who choose to order compensatory work service should require service that provides some benefit to the community or service that helps reduce instances of driving under the influence by the defendant or by other people.*

provides some benefit to the community or service that helps reduce instances of driving under the influence by the defendant or by other people. However, its effects on the offender are unknown.

**G. Screening and Assessment**

Current law might be interpreted as suggesting that screening and assessment are the same instrument or the same process. Actually, they are two separate processes and involve separate instruments. The screening is a quick, general appraisal of the person used to determine if a more in-depth assessment is required by identifying indicators of substance abuse or substance dependence. If the screening concludes that an assessment is not necessary, the offender will likely require only education. If the screening concludes that an assessment is necessary, the assessment will determine whether a substance

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abuse problem exists. The treatment provider can then decide on an appropriate treatment program.

Ideally, different entities will perform (1) the screening and assessment and (2) any education or treatment. This avoids perceived and real conflicts of interest and should give the court greater comfort in allowing the licensed treatment provider to determine the type and extent of treatment. Wherever possible, the local substance abuse authority should perform the screening and assessment and a separate licensed treatment provider should provide the education and treatment. Of course, this practice is not possible in all areas of the state due to limited licensed substance

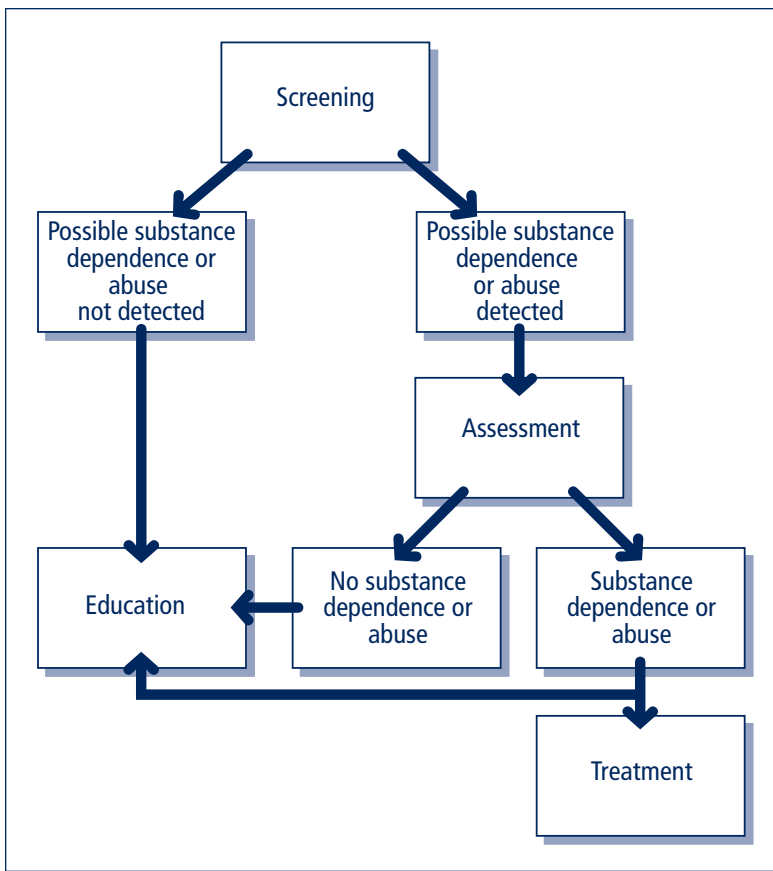
## BEST PRACTICES

*Wherever possible, the local substance abuse authority should perform the screening and assessment and a separate licensed treatment provider should provide the education and treatment.*

abuse treatment providers outside of the local substance abuse authority.

## H. Education and Treatment

Education and treatment have different aims and are used with different types of offenders. Education addresses any problems or risk factors that appear to be related to use of alcohol and other drugs and attempts to help the individual recognize the harmful consequences of inappropriate use with special emphasis placed on the dangers of drinking and driving. Offenders participating in education may not appear to have a substance abuse or substance dependence disorder, but still require early intervention.



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Treatment involves the application of planned procedures to identify and change patterns of behavior that are maladaptive, destructive, and/or injurious to health; or to restore appropriate levels of physical, psychological and/or social functioning. DUI offenders assessed as meeting the diagnostic criteria for a substance use disorder should participate in a treatment program in addition to, or in lieu of, the educational course.

It is important to remember that many DUI offenders have substance abuse problems that go beyond alcohol. In fact, DUI goes beyond alcohol and includes driving under the influence of any drug that causes impairment. These abuses can and should also be addressed in treatment. Because the assessment determines the severity of the disorder and the severity of the disorder determines the level of treatment, the court should not order a particular treatment program prior to an assessment conducted by a licensed treatment provider.

Unfortunately, most research evaluates education and treatment together as though they are the same, making it difficult to draw conclusions about the effectiveness specifically of education. Treatments vary in modality, but most attempt to curb the behavior of the offender by reducing or controlling dependence on alcohol and other substances. Previous research indicates that about one-third of DUI offenders are “problem-drinkers” while the remaining two-thirds are “social drinkers.” While treatment providers dispute whether these ratios of problem drinkers and social drinkers are accurate, they do agree that problem-drinkers are generally candidates

## BEST PRACTICES

*The court should not order a particular education course or a particular treatment modality. Rather, the court should order that the offender receive a screening by a licensed treatment provider and participate in any assessment, education, and/or treatment recommended by the treatment provider. Utah law requires that the court order treatment for felony convictions and that the court order education for misdemeanor convictions if treatment is not ordered. Even in these circumstances, the court should allow the licensed treatment provider to determine the education and/or treatment program best suited for the individual offender.*

for treatment while social drinkers are candidates for education (Voas & Fisher 2001).

Researchers reviewing 215 studies on DUI remediation found a 7% to 9% decrease both in DUI recidivism and alcohol-related crashes. The same researchers concluded the interventions that appeared to have the greatest impact on recidivism were those that combined multiple modalities, such as education, psychotherapy/counseling, and follow-up via probation (Wells-Parker & Bangert-Drowns 1995, Wells-Parker 1994).

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This guidebook will not go so far as to prescribe the types of treatments that should be used with offenders exhibiting certain characteristics. However, research does indicate that various approaches including cognitive-behavioral, pharmacological, and educational have proven effective with DUI offenders (Kadden 1994, Alcohol Research & Health 2000). Research has also found that mandated treatment for an unwilling participant has a small, but positive effect on reducing DUI recidivism (Wells-Parker 1994). One well-known intervention for those with substance abuse problems is Alcoholics Anonymous and similar support groups. Personal testimonials of the effectiveness of this type of support group abound though research on its effectiveness is scarce. As with all interventions, it is likely more effective for some people than for others. Though Alco-

Controlling behavior while the offender is undergoing treatment is critical to successful recidivism reduction. Control can be in the form of supervised probation, electronic monitoring, ignition interlock, or license actions. This control must be maintained during the six to 18 months required to treat the DUI offender (Addiction 2001, Deyoung 1997).

The court should not order a particular education course or a particular treatment modality. Rather, the court should order that the offender receive a screening by a licensed treatment provider and participate in any assessment, education, and/or treatment recommended by the treatment provider. Utah law requires that the court order treatment for felony convictions and that the court order education for misdemeanor convictions if treatment is not ordered. Even in these circumstances, the court should allow the licensed treatment provider to determine the education and/or treatment program best suited for the individual offender.

## BEST PRACTICES

*Controlling behavior while the offender is undergoing treatment is critical to successful recidivism reduction. Control can be in the form of supervised probation, electronic monitoring, ignition interlock, or license actions. This control must be maintained during the six to 18 months required to treat the DUI offender.*

holics Anonymous is considered by many treatment providers to be neither an educational tool nor a treatment modality, the treatment provider, rather than the court, should make decisions regarding its use in a treatment program.

## I. License Confiscation and Other Vehicle Action Programs

Many researchers argue that driver license suspension, license plate confiscation, and vehicle impoundments are the most cost-effective sanctions for reducing recidivism and crashes involving DUI offenders, and in reforming repeat drunk drivers. One author who makes this argument conducted a meta-analysis of research on DUI sanctions which found that these sanctions are most effective in accomplishing general deterrence and are the most economical sanctions (Ross 1991).

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Other research reviewed a collection of studies focusing on the effectiveness of three vehicle action programs in six states: driver license suspension, license plate revocation and vehicle impoundment/forfeiture (Voas & DeYoung 2002). The authors concluded that while all three vehicle action programs can be effective, driver license suspension was the most effective of those reviewed in reducing recidivism and crashes involving DUI offenders. While the authors concede that many offenders continue to drive on suspended licenses, it was found that most of those who do drive on a suspended license drive less, drive more carefully, and are less likely to drive while intoxicated. Further research found that license suspensions must last at least three months to be effective in reducing recidivism and that the optimal suspension period for recidi-

vism reduction is 12 to 18 months. This is consistent with Utah law requiring a 90-day suspension for a first DUI violation and a one-year revocation for second or subsequent DUI violations. (National Highway Traffic Safety Administration 1996).

There are several studies that detail the specifics of license plate revocations and look at the laws designed to enforce the sanction. One study analyzed the effectiveness of a Minnesota law that allowed police officers to confiscate registration and license plates of cars at the point of arrest (Ross et al. 1996). The law was compared to the previous law that required an administrative process initiated by the courts. The adoption of the police confiscation procedure at point of arrest resulted in more than a 10-fold increase in confiscations over the previous court-ordered process. The previous process averaged 19 confiscations per month. During the first nine months of the new law, the average was 219 confiscations per month. The authors cited numerous studies that demonstrate the effectiveness of confiscations and concluded that its increased use will result in a lower recidivism rate for DUI offenders. One major requirement for the implementation of license plate confiscation is accurate and automated records of criminal history, accessible to police in the field in order to take appropriate courses of action at the point of arrest.

## BEST PRACTICES

*License suspensions must last at least three months to be effective in reducing recidivism and the optimal suspension period for recidivism reduction is 12 to 18 months. This is consistent with Utah law requiring a 90-day suspension for a first DUI violation and a one-year revocation for second or subsequent DUI violations.*

## J. Victim Impact Panels

Victim Impact Panels (VIPs) were initiated by Mothers Against Drunk Driving (MADD) to evoke an intense emotional incentive to stop convicted DUI offenders from future drunk driving behavior. The VIPs involve presentations by individuals seriously injured or whose loved ones were killed in drunk driving crashes. Presenters discuss the impact the significant loss had on their lives (DeBaca et al. 2001). It is hoped that convicted DUI offenders will change their behavior when they understand the potential impact their drinking and driving may have on other people.

### BEST PRACTICES

*Victim Impact Panels may be effective for first-time DUI offenders, but should never replace other sanctions and interventions.*

Results of analysis on the effectiveness of VIPs are mixed. Fairly consistent are findings that DUI offenders' perceptions are impacted after attending VIP sessions. The offenders lose their desire to drink and drive (Sprang 1997, Polacsek et al. 2001, Fors & Rojek 1999). However, some studies have found that in the longer-term, VIPs had no impact on re-arrest rates among both first-time and repeat DUI offenders (Polacsek et al. 2001, DeBaca et al. 2001), while other studies show modest, positive outcomes, especially for first-time offenders (Fors & Rojek 1999, DeBaca et al. 2000). With the effectiveness uncertain, Victim Impact Panels, at best, should only be used in conjunction with, rather than in place of, other proven DUI interventions. If used, VIPs should generally be considered as a small portion of a first-time DUI offender's intervention.

## VII. *Conclusion*

As stated previously, this guidebook does not attempt to identify the one sanction or intervention that will be effective for all DUI offenders. Nor does it identify a rehabilitation outline for all DUI offenders. Rather, this guidebook recognizes that all DUI offenders are unique individuals with unique circumstances and needs. Thus, the best practices and other information contained in this guidebook must be considered as a whole, understanding that a combination of sanctions and interventions is most effective in reducing future DUI offenses and alcohol-related crashes. This guidebook will not answer all questions related to sentencing DUI offenders, nor should it. Sentencing must be individualized in order to be effective. However, this guidebook can be an effective tool for those who sentence and work with DUI offenders.

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